



MAINE REAL ESTATE NEWS



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From the Director's Desk *Carol J. Leighton*

THE 119TH LEGISLATURE APPROVES CHANGES TO THE LICENSE LAW *CHANGES INCLUDE THE REPEAL OF TIMESHARE LICENSE, INCREASED CONTINUING EDUCATION REQUIREMENTS AND BRANCH OFFICES IN RESIDENCES MUST BE LICENSED.*

Legislation submitted by the Commission to amend the License Law has been approved by the 119th Legislature and signed into law by the Governor. As with all non-emergency bills, the changes will become effective 90 days after adjournment. Passage of the legislation requires the Commission to propose rules to implement the changes to the statute. More information about the Commission's rulemaking schedule is included in this article.

CHANGES TO THE LICENSE LAW

❶ The **timeshare agent** license requirement is repealed (§13201). Consistent with the repeal of the license requirement, a fourth exception to brokerage (§13002) has been added to exempt "real estate transaction services subject to the provisions of Title 33, chapter 10-A" (the timeshare statute);

❷ The **continuing education** requirement for renewal of an active license has increased from 12 to 15 clock hours (§13197);

❸ The requirement to **activate a license** has been amended (§13196). Incremental increases in the number of clock hours needed to activate a license determined by the length of time the license is inactive. The time frames for determining the requirements for activation begin **running on the effective date of the changes to the License Law.**

What does this mean for currently licensed inactives? If you activate your license after the implementation date of the law but before September 2001, you will be required to complete 15 hours of continuing education. If you seek to activate your license September 2001 or after, you will

be required to comply with the incremental increase in clock hours, as illustrated in the following paragraphs:

- ♦ Licensees seeking to activate from the issuance of the inactive license up to 2 years will need 15 clock hours of continuing education to activate;
- ♦ Licensees who remain inactive for more than 2 years but less than 4 years will need 22 clock hours of continuing education to activate;
- ♦ Licensees who remain inactive for more than 4 years but less than 6 years will need 30 clock hours of continuing education to activate; and,
- ♦ Licensees who remain inactive for more than 6 years will need to successfully complete an examination to activate.

❹ Repeal of a **complainant's right** to a hearing after dismissal of the complaint by the Director (§13066 (B);

❺ Repeal of one of the methods to **qualify for an associate broker license** – by completing one year in a degree program and passage of the sales agent examination (§13199 C);

❻ **Branch office license** will be required for office locations in personal residences (§13173 (6);

❼ Repeal of §13251 – the **Opinion of value; mobile home section**; and,

❽ **Minor housekeeping** changes to clarify the following sections: §13177, 13067 (1)(L), 13195, 13271 (10) & (12).

As mentioned, the effective date of the changes to the License Law will be 90 days after adjournment. As of the printing of this

newsletter the 119th Legislature had not yet adjourned, however, it is anticipated that adjournment may occur on May 28 or shortly thereafter. Therefore, the effective date of the changes would be sometime in early September 1999.

REALTOR BILL TO AMEND AGENCY DISCLOSURE REQUIREMENT PASSES

The Maine Association of Realtors submitted legislation to amend the agency disclosure requirement to limit the duty to provide "Form #1" to buyers and sellers of residential real property. Residential real property is defined in the bill as "real estate consisting of not less than one nor more than 4 residential dwelling units." As with the legislation described above, the effective date of the amendment will be 90 days after adjournment.

COMMISSION TO SCHEDULE RULEMAKING HEARING

Passage of the legislation described above will require the Commission to schedule rulemaking this summer to amend related sections of the rules. In addition, the Commission is considering amending the Agency Disclosure Form #1 and will be receiving information from a recently created task force to consider exempting commercial properties from the mandatory property disclosure requirements. The Commission has not proposed any specific changes as of the date of the printing of the newsletter. The Commission will be discussing the proposed changes at their regularly scheduled meetings in May and June and will send notice of the proposed rule changes to licensees along with the date of the scheduled rulemaking, which should occur sometime during the summer months.

CURRENT CASES *Karen R. LaBree, Deputy Director*

Maine Real Estate News publishes names of licensees who have received disciplinary action from the Maine Real Estate Commission which resulted in suspension or revocation of a license.

On May 28, 1998 the members of the Commission ratified their decision reached after a hearing on April 23, 1998 involving Bruce E. Bonin of Belfast, Maine.

On November 6, 1997 the Commission members issued a decision ordering Bonin to pay a fine of \$150.00 within thirty days. Bonin did not pay the fine within the specified time period. In the April 23, 1998 hearing, he was found in violation of 32 M.R.S.A. § 13067(1)(M). The Commission members ordered the immediate revocation of Bonin's sales agent license. ☹

On November 19, 1998 the members of the Commission ratified their decision reached after a hearing on October 22, 1998 involving Stephen L. Hardy of Bangor, Maine.

On July 23, 1998 the Commission members accepted a consent agreement entered into by the Director and Hardy in which Hardy agreed to pay a fine of \$400.00 by July 31, 1998. Hardy did not pay the fine within the specified time period. In the October 22, 1998 hearing, he was found in violation of 32 M.R.S.A. § 13067(1)(M). The Commission members ordered the immediate suspension of Hardy's sales agent license until he paid the fine. ☹

On December 10, 1998 the members of the Commission ratified their decision reached after a hearing on November 19, 1998 involving Harland S. Masker of Portland, Maine.

On May 8, 1998 Masker submitted an application for a sales agent license. In answer to the question inquiring whether the applicant had been convicted by any court for any offense, Masker responded yes and supplied the explanation, "a dog I owned bit someone. I plead guilty to assault as a result of that dog bite." The license was issued on May 8, 1998.

Subsequently, the Director learned that Masker had been found guilty of 5 counts of assault, was sentenced on 1 count to 5 months imprisonment with

credit for time served, and on each of the remaining 4 counts was sentenced to 364 days imprisonment to run consecutively. The sentences for imprisonment for those 4 counts were suspended, and Masker was placed on probation for 1 year for each count, to run consecutively. Later, Masker was found to have violated the terms of his probation and was ordered to serve 60 days of the underlying sentence.

In addition, Masker had been convicted of criminal mischief in 1985, operating under the influence of liquor and leaving the scene of a property damage accident in 1985, operating after suspension in 1986, and leaving the scene of a property damage accident in 1988.

Masker was found in violation of 32 M.R.S.A. § 13067(1)(A). The Commission members ordered the immediate revocation of Masker's sales agent license. ☹

On December 10, 1998 the members of the Commission ratified their decision reached after a hearing on November 19, 1998 involving Kathleen C. Rae-Lawson of Brewer, Maine.

On November 16, 1997 Rae-Lawson entered into a consent agreement with the Director in which she agreed to pay a fine in the amount of \$600.00. The fine was to be made by paying \$100.00 by December 1, 1997; \$100.00 by April 1, 1998; \$200.00 by September 1, 1998; and \$200.00 by January 1, 1999. Rae-Lawson made the first two payments but did not make the payment due by September 1, 1998.

Rae-Lawson was found in violation of 32 M.R.S.A. § 13067(1)(M). The Commission members ordered the immediate suspension of Rae-Lawson's inactive broker license until such time as she complies with the terms of the November 6, 1997 consent agreement. ☹

Maine Real Estate News publishes summaries of current cases as information to licensees to help avoid future problems of a similar nature.

On February 26, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to properly maintain the agency trust account.

As the result of an office examination and trust account audit by the Commission staff, it was found that the designated broker failed to maintain minimum trust account

records by not maintaining a current running balance for the account and by not consistently noting the purpose of the deposit and withdrawal of funds held by the agency. In addition, the designated broker failed to make earnest money deposits within three business days of the acceptance of the offer.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F), and Chapter 320 Sections 3(C) and (F) of the Maine Real Estate Commission Rules; agreed to pay a fine of \$500.00, to take steps to adequately maintain trust account records, and to establish a policy to ensure that earnest money deposits are made within three business days of acceptance of the offer. ☹

On February 26, 1998 the members of the Commission accepted two related consent agreements entered into by the Director and two licensees.

An associate broker submitted an application for a real estate broker license. As part of that application, the associate broker submitted documentation of full-time brokerage activity from April 18, 1996 through December 16, 1997. The brokerage activity consisted of 11 sales, 21 listings and 12 purchases. The associate broker stated that he was employed by Bangor Hydro-Electric Company as a full time right-of-way agent whose duties involved all aspects of selling company real estate and managing rental properties. The licensee's designated broker certified the information provided by the associate broker, and both confirmed that the activity was conducted on behalf of Bangor Hydro. The associate broker and the designated broker are both licensed with an agency other than Bangor Hydro.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(E); agreed to pay a fine of \$250.00, and to cease and desist all brokerage activity conducted on behalf of an entity other than the agency with which he is licensed. The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(E) and agreed to pay a fine of \$250.00. ☹

On March 12, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a broker, who at all times relevant to the agreement was a designated broker.

This synopsis will refer to the broker as a designated broker.

On October 28, 1993 the Commission held an adjudicatory hearing involving the designated broker. During the hearing, evidence was presented that showed between 1991 and July 8, 1993, the property disclosure form used by the designated broker's agency was not in compliance with Commission rules. On July 8, 1993 the designated broker amended the form to bring it into compliance. As a result, the Commission did not find the designated broker in violation of Commission rules at the October hearing. Subsequently, a licensee listed property and used the property disclosure form that was not in compliance. Sometime after August 4, 1995 the designated broker amended the property disclosure form, but did not provide for all the required information. The designated broker again amended the property disclosure form on December 12, 1996, bringing it into compliance with Commission rules.

The designated broker copied the draft Agency Disclosure Form #1 that appeared in the June 1994 Commission newsletter for use by the agency affiliates. As the result of a complaint, the designated broker was notified in January 1996 that the Form #1 used was not the correct form that was adopted by the Commission. The following month the designated broker made available to agency affiliates the proper Agency Disclosure Form #1.

The designated broker was asked to provide a copy of the written agency policy in place at the time of a particular transaction. The designated broker did not provide the requested information.

At some point prior to entering to the consent agreement, the designated broker closed the agency and affiliated to another agency as a broker.

The broker was found in violation of 32 M.R.S.A. § 13179, § 13067(1)(F), and Chapter 320 Sections 1(A)(4) and (B) of the Maine Real Estate Commission Rules; agreed to pay a fine of \$1,500.00 and agreed not to apply for a designated broker license before completing successfully the course, "The Role of the Designated Broker." ☹

On March 12, 1998 the members of the Commission ratified their decision reached after a hearing on February 26, 1998 involving an associate broker who is no longer licensed.

On December 14, 1993 the associate broker listed for sale property which he had listed previously, that consisted of a single family residence and land. He did

not discover the presence of a sump pump in the basement and therefore did not further question the seller about the possibility of the basement being wet. In addition, the associate broker failed to note what appeared to be asbestos siding on part of the exterior of the building. He also failed to obtain information regarding the location of the private water supply, the date of installation of the system, and the date of the most recent water test. He did not indicate on the property disclosure form that the information was unknown. Had the associate broker completed all the blank spaces on the form, he might have elicited information from the seller about the inadequacy of the water supply and the existence of a connection to the neighboring property's water supply.

Shortly after the last listing, the associate broker showed the property to a buyer. The buyer's offer to purchase was accepted, the sale closed, and the buyer moved in during March 1994. After moving into the house, the buyer began experiencing problems with various aspects of the property.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and (H), and Chapter 330 Section 16 of the Maine Real Estate Commission Rules; and was ordered to pay a fine of \$100.00. ☹

On March 26, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to follow the procedures set out in the agency's written policy.

A sales agent licensed with the agency listed property that consisted of 8 wooded lots. The seller of the property entered into an exclusive agency listing agreement. Although the agency practiced disclosed dual agency, and the designated broker instructed the sales agent to prepare a disclosed dual agency consent agreement, the sales agent failed to present it to the seller or to obtain the seller's consent to the relationship.

Subsequently, the designated broker's brother became interested in the property, and the designated broker told the seller of his interest. The designated broker prepared an exclusive buyer agreement for her brother that indicated the brother was being represented by the designated broker only. The designated broker did not provide her brother with either a disclosed dual agency consent agreement or an appointed agent form.

The brother made an offer that

eventually was accepted by the seller. The contract stated that the sales agent was representing the seller, and the designated broker was representing the buyer. The sale closed a few months later.

The agency's written policy stated that the agency represented both buyers and sellers, and practiced disclosed dual agency. It also stated that if the buyer is a relative of an agent, then the agent must represent the buyer and cannot act as a subagent of the seller. The policy contained information that described the practice of appointed agency, but the designated broker confirmed that the agency did not offer appointed agency.

The designated broker was found in violation of 32 M.R.S.A. § 13275 and § 13277; agreed to provide a written agency policy that identifies and describes the types of real estate brokerage agency relationships practiced by the agency consistent with Chapter 320 Section 1(B) of the Maine Real Estate Commission Rules; agreed to pay a fine of \$500.00; and agreed to successfully complete an educational course. ☹

On April 23, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to submit requested information to the Commission.

On September 26, 1997 the designated broker's agency license expired and was not renewed until October 8, 1997. The Commission staff sent a letter requesting information about the brokerage activities of the agency affiliates during the unlicensed period. On November 24, 1997 another letter was sent to the designated broker asking for the same information, giving a deadline of December 9, 1997 for the response. In addition, questions had arisen about the corporate information on file at the Commission. The designated broker was asked to submit a copy of the current articles of incorporation. Some information was submitted by the designated broker, but it was not complete.

Subsequently, the designated broker submitted additional information about brokerage activities that was not complete and did not all pertain to the time period when the agency was not licensed. Further requests were made of the designated broker, with no information being provided.

An office examination and trust account audit were conducted at the agency office. The agency trust account was an interest bearing account. The interest was supposed to be paid to the Realtor Affordable Housing Fund, but had never been

transferred out of the trust account. Earnest money deposits were not always made within three business days of the acceptance of an offer. The designated broker failed to maintain a running balance in the trust account. In addition, the designated broker was not able to account for and identify the balance of the funds held in the account.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F), (H), and (L), and Chapter 320 Sections 3(A), (C) and (F) of the Maine Real Estate Commission Rules; agreed to pay a fine of \$500.00; to retain a certified public accountant to audit the agency trust account and to take steps to rectify any deficiencies found; and to submit the requested information pertaining to brokerage activity of the agency affiliates during the time period when the agency was not licensed.☞

On April 23, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker. An office examination and trust account audit were conducted at the designated broker's agency. Several deficiencies were found.

The designated broker failed to maintain an agency trust account from May 10, 1997 until December 11, 1997. On that date, the designated broker opened an agency trust account but failed to identify it as a real estate trust account. Agency funds were commingled with money of clients and customers. The designated broker failed to maintain records and supporting documents sufficient to verify the adequacy and proper use of the trust account.

The designated broker failed to provide an adequate property disclosure form for use by the agency affiliates. In addition, the designated broker's conduct as a whole demonstrated a failure to exercise a reasonable level of supervision.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F), § 13178, and § 13179, Chapter 320 Sections 3(B), (D), (E), (F) and (G), and Chapter 330 Section 19 of the Maine Real Estate Commission Rules; agreed to pay a fine of \$2,000.00; to submit a supervision schedule; to take steps to maintain trust account records; to identify the trust account as a real estate trust account; to revise the written agency policy; and to take again the course "The Role of the Designated Broker".☞

On May 28, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a broker who failed to protect and promote the interests of her client with absolute fidelity. The broker listed property for sale with her agency and subsequently showed it to an interested buyer. The broker provided the buyer with a property data sheet and a property disclosure form, but did not give the buyer an Agency Disclosure Form #1. She asked the buyer if he was represented by a broker and he stated that he was not.

The buyer requested a second showing and told the broker that he would be accompanied by a contractor and a relative. The showing was scheduled and when the broker arrived at the property to conduct the showing, the buyer was accompanied by a contractor and a licensee from another agency. The buyer told the broker that the other licensee was representing him as a buyer broker. The broker became angry and reminded the buyer that he had previously told her that he was not represented by a broker. A confrontational conversation ensued between the broker and the buyer and the showing did not take place.

The broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and (G), and Chapter 330 Section 9(B) of the Maine Real Estate Commission Rules, and agreed to pay a fine of \$200.00.☞

On May 28, 1998 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who failed to disclose on her license application a conviction of a Class E crime. The associate broker completed the license application stating under oath that she had not been convicted by any court for any offense. After the license was issued, the Director learned from the State Bureau of Identification that the associate broker had been convicted of a Class E crime of theft.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(A), agreed to pay a fine of \$200.00 and to amend her license application by submitting written disclosure of any conviction.☞

On May 28, 1998 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who failed to act in a reasonable manner in representing her client. The associate broker listed property for sale with her agency and entered into an appointed agent relationship with the seller. She did not explain that in such a relationship, she would

be representing the interests of the seller to the exclusion of all other licensees unless specifically appointed to represent the seller. During the listing, the associate broker prepared a property disclosure form.

The associate broker listed the property several times over the course of the next year. She completed appointed agent forms but did not have a discussion about the nature of such a relationship. She did not update the property disclosure information.

A broker from the same agency represented two different buyers at different times who both attempted to purchase the property. In both transactions, the offers prepared by the broker indicated that he was representing the buyers exclusively. Both transactions failed to be consummated because of problems with the buyers being able to obtain financing.

The seller filed a complaint with the Commission alleging that the broker, who was representing the buyers, failed to act in the best interests of the seller. During the investigation it was determined that the seller did not understand that the only agent representing him was the associate broker. In addition, the associate broker stated that she did not know that the broker was representing the buyer, even though the policy of the agency was to practice appointed agency, and the offers prepared by the broker both indicated that he was representing the buyers.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(A), (F), (G) and (H), Chapter 330 Sections 16, 17, 18 and 19 of the Maine Real Estate Commission Rules, and agreed to pay a fine of \$1,000.00.☞

On May 28, 1998 the members of the Commission ratified their decision reached after a hearing on March 26, 1998 with public deliberations on April 23, 1998, involving a designated broker who failed to provide complete property disclosure information to a buyer.

An agent licensed with the designated broker's agency listed a property for sale and provided the sellers with a property disclosure form to complete. The sellers noted on the form in a section pertaining to foundation and basement that the home contained a full basement and that there was a water problem which was controlled by a sump pump and drain pipe. Subsequently the sellers sold the property to a relocation company which in turn listed the property with the designated broker's agency.

The relocation company completed a property disclosure form that had been modified since the property was originally listed. The new form did not contain a specific reference to the foundation. The relocation company completed the form with responses of unknown. The designated broker did not modify the form to reflect information obtained from the previous owners.

The designated broker showed the property to prospective buyers, at which time the basement was dry. The designated broker provided the buyers with a copy of the property disclosure form prepared by the relocation company, but did not give the buyers a copy of the form prepared by the previous owners, nor did he discuss the information obtained from the previous owners. The buyers made an offer and the relocation company accepted. Before the closing, water was discovered in the basement and the designated broker encouraged the buyers to seek advice from a professional to determine the source of the basement flooding. The sale subsequently closed.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(H) and was ordered to take an educational course.☞

On June 11, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose on his license application a conviction of a Class D crime. The sales agent completed the license application stating under oath that he had not been convicted by any court for any offense. After the license was issued, the Director learned from the State Bureau of Identification that the sales agent had been convicted of a Class D crime of criminal mischief.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A), agreed to pay a fine of \$200.00 and to amend his license application by submitting written disclosure of any convictions.☞

On June 11, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a broker who failed to provide to the buyer information about a boundary line that included a portion of the driveway to the adjacent property.

The broker listed two adjacent lots for sale with her agency. One of the lots was undeveloped land of minimum size for construction of a single family residence.

The other lot was land with an existing single family residence. The seller had used the lots as one parcel during her ownership and told the broker that she would have a plot plan completed to ensure that the first lot was buildable.

Buyers were found for both lots and sales agreements were entered into by the buyers and the seller. Before the closings, the seller informed the broker that in order for the undeveloped lot to be buildable, the boundary line between the two lots would have to go through a portion of the driveway leading to the existing house. The seller told the broker that she intended to convey an easement for the driveway. The broker contacted the licensee representing the buyers of the existing house and explained the situation. The licensee conveyed the information to his buyers and the easement was conveyed at the closing. The broker did not contact the licensee representing the buyers of the vacant lot about the boundary and the easement. The buyers were not informed of the matter until the closing of their purchase was underway, but continued with the purchase.

The broker was found in violation of 32 M.R.S.A. § 13067 (1)(A) and (H), and agreed to pay a fine of \$500.00.☞

On June 11, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to ensure that she and the licensees affiliated with her agency consistently obtained and provided written property disclosure information.

During an office examination, fourteen closed transaction files were reviewed. Twelve of the files pertained to property purchased by a buyer represented by the agency. The buyer was an attorney who prepared a purchase and sales agreement form which included property disclosure information specific to his purposes, but did not include all disclosure information required by Commission rules. The agency did not provide the buyer with the additional information. Of the remaining two files reviewed, one contained the required property disclosure information. The other file involved a property owned by a local bank in which the bank refused to provide the information. The listing licensee made no effort to obtain the information from other sources. The designated broker agreed to modify the agency practices to ensure that property disclosure information is obtained and conveyed in compliance with Commission rules.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F), Chapter 330 Sections 15, 16, 17, 18 and 19 of the Maine Real Estate Commission Rules, and agreed to pay a fine of \$200.00.☞

On June 11, 1998 the members of the Commission ratified their decision reached after a hearing on May 28, 1998 involving a designated broker who failed to respond to a request from the Director for information about brokerage activity during an unlicensed period.

The designated broker's license expired on September 22, 1997 and the agency license expired on December 10, 1997. Both licenses were renewed on December 22, 1997. On February 4, 1998 the Commission staff sent the designated broker a letter requesting information about brokerage activities during the unlicensed period. No response was received.

On March 6, 1998 the Commission staff again sent the designated broker a letter requesting information about brokerage activities during the unlicensed period. No response was received. On April 15, 1998 the Commission staff sent the designated broker a letter stating that a hearing would be scheduled due to the designated broker's failure to respond to the previous requests for information. No response was received.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(L), was ordered to pay a fine of \$300.00 and to immediately provide the requested response about brokerage activities during the unlicensed period.☞

On July 23, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose a criminal conviction. The sales agent stated on his sales agent license application that he had no convictions by any court for any offense. After the license had been issued, it was learned that the sales agent had been convicted in 1991 of a Class D crime of assault.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A), agreed to amend his license application, and to pay a fine of \$400.00.☞

On July 23, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a broker who failed to notify the Director within 10 days of a material change in the conditions or qualifications set forth in his original license application.

The broker became licensed with the Commission in 1984 and stated in his license application that he had never had a license revoked or suspended. The broker was also licensed as a Nursing Home Administrator in the State of Maine. On March 25, 1998 the broker entered into a consent agreement with the Nursing Home Administrators Licensing Board which required a suspension of his Nursing Home Administrator license for a total period of 180 days. The broker did not notify the Director of the suspension, as required by law.

The broker was found in violation of 32 M.R.S.A. § 13195 and agreed to pay a fine of \$300.00.☞

On July 23, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who was licensed in Maine and in New Hampshire. The designated broker notified the Director that a non licensed owner of the agency had misappropriated agency funds, including trust funds pertaining to properties in New Hampshire.

An office examination and trust account audit were conducted by Commission staff. It was found that the designated broker failed to maintain minimum trust account records and supporting documents sufficient to verify the adequacy and proper use of the agency trust account. He failed to maintain an account in the name of the agency as licensed by the Commission and identified as a real estate trust account. He failed to consistently deposit earnest money deposits within 3 business days of acceptance of an offer. He did not properly monitor the activity of the agency trust account and did not have a general knowledge of brokerage related staff activities.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and (G); § 13178; Chapter 320 Sections 1(A)(2), 3(B), (C), (E), (F), and (G) of the Maine Real Estate Commission Rules; agreed to pay a fine of \$1,000.00 and to complete an educational course.☞

On August 13, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to respond to a Commission inquiry. The Commission staff requested from the designated broker a written response addressing the agency's policy and procedures regarding disclosure of fees paid to the agency by builders for the referral of buyers to the builders. No response was received.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(L), agreed to pay a fine of \$400.00 and to provide a response to the inquiry.☞

On August 13, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a broker who made errors in preparing information about a property listed with the agency.

The broker listed land for sale through her agency for a price of \$27,000.00. In gathering information about the property, the broker relied on the knowledge of the sellers as well as records on file with the town. The town records included a map with a notation that the road frontage was 354 feet, which was crossed out and replaced with 415 feet. The town records also referenced two deeds pertaining to the property. Upon reviewing them, neither deed appeared to describe the lot for sale but did mention another deed. The broker reviewed that deed, which appeared to be for the correct parcel and stated that the property could not be subdivided.

The broker prepared a data sheet stating in one section that the road frontage was 415 feet, and in another section that the road frontage was 354 feet. The sellers completed a property disclosure form indicating that there were no restrictions on the property. The broker did not question the apparent discrepancy in the answers of the sellers and the information contained in the deed prohibiting subdivision.

The broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and (H), and Chapter 330 Section 13 of the Maine Real Estate Commission Rules; and agreed to pay a fine of \$300.00.☞

On September 10, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to comply with the terms of an executed and approved consent agreement.

The designated broker previously had entered into a consent agreement and agreed to take corrective steps to adequately maintain trust account records and provide to the Commission documentation detailing those steps. She agreed to immediately establish an office procedure to ensure all earnest money funds were deposited within 3 business days of acceptance of an offer, and agreed to pay a fine.

As part of that agreement, the designated broker submitted a handwritten statement that the agency must deposit

money within 3 business days of acceptance of an offer, and that the agency would maintain monthly an adequate account of all records and maintain a current running balance for the trust account. The Commission staff requested that the designated broker submit additional information and specifically listed several items to be submitted. No response was received.

Subsequently, the Commission staff again instructed the designated broker to submit the requested information. In response the designated broker submitted information and stated that the bank on which the agency trust account was drawn had withdrawn from the account the amount of \$450.00 plus a handling fee of \$5.00, in error. The designated broker said that she became aware of the withdrawal in January 1998 and did not replace the funds until April 6, 1998. In addition, an amount of \$46.42 was withdrawn from the account by the bank on April 14, 1998 to cover check printing fees. The designated broker did not replace the funds until May 9, 1998.

It was determined that the designated broker should have been holding \$1,000.00 in earnest money in the agency trust account. From January 1998 until May 9, 1998, the agency trust account did not have a balance equal to the amount of funds being held.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(A) and (M); agreed to give up her designated broker license, to be reissued as a broker license, and to successfully complete the course "Role of the Designated Broker" before applying for a designated broker license.☞

On September 10, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who used a property disclosure form that was not in compliance with the current Commission requirements. The section of the form pertaining to private water supply did not include information about the location of the water supply, date of installation, or the date of the most recent water test. The section pertaining to the waste disposal system included a question about size and type, but did not specify whether the size and type referred to the septic tank. In addition, the form did not provide for information about the malfunctions of the tank and leach field separately. Subsequent to the investigation, the designated broker modified the property disclosure form used by the agency to comply with current Commission requirements.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(H) and agreed to pay a fine of \$300.00.☞

On September 10, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose a criminal conviction. The sales agent stated on his sales agent license application that he had no convictions by any court for any offense. After the license had been issued, it was learned that the sales agent had been convicted in 1978 of assault. After being contacted by the Director, the sales agent submitted an amendment to the license application disclosing the conviction.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A), and agreed to pay a fine of \$100.00.☞

On October 22, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose a criminal conviction. The sales agent stated on his sales agent license application that he had no convictions by any court for any offense. After the license had been issued, it was learned that the sales agent had been convicted in 1983 of "Theft by Unauthorized Taking." After being contacted by the Director, the sales agent submitted an amendment to the license application disclosing the conviction.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A), and agreed to pay a fine of \$100.00.☞

On October 22, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose a criminal conviction. The sales agent stated on his sales agent license application that he had no convictions by any court for any offense. After the license had been issued, it was learned that the sales agent had been convicted in 1990 of "Negotiating a Worthless Instrument." After being contacted by the Director, the sales agent submitted an amendment to the license application disclosing the conviction.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A), and agreed to pay a fine of \$100.00.☞

On October 22, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose a criminal conviction. The sales agent stated on

his sales agent license application that he had two convictions of "Operating Under the Influence." After the license had been issued, it was learned that the sales agent had been convicted in 1974 and again in 1975 of "Assault and Battery." After being contacted by the Director, the sales agent submitted an amendment to the license application disclosing the convictions.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A); and agreed to pay a fine of \$100.00.☞

On October 22, 1998 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who disclosed a conviction. The associate broker notified the Director prior to her conviction of 6 counts of "Failure to Make and File Maine Income Tax Return."

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(A), and agreed to pay a fine of \$500.00.☞

On October 22, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to comply with the terms of a Commission order.

The designated broker had been ordered to complete an educational course by July 9, 1998. On July 14, 1998 the Director received a copy of a certificate showing that the designated broker had completed the course on July 13, 1998.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(M), and agreed to pay a fine of \$200.00.☞

On October 22, 1998 the members of the Commission accepted a consent agreement entered into by the Director and a broker who failed to note that information he had about a property was inconsistent with the way it was being advertised.

The broker listed for sale with the agency a house that was serviced by a private waste disposal system. On the property data sheet, the broker described the house as a four bedroom cape. The seller of the property was the executor of the estate of the former owner, and did not have any information about malfunctions of the septic system. The individual servicing the system could not locate any records about the system. The broker indicated on the property disclosure form that it was unknown if there had been any malfunctions with the system.

Buyers for the property were found. Shortly before the closing, the septic tank

was pumped and it was discovered that the leach field was not working properly. The executor agreed to install a new leach field, and the broker arranged to have a contractor design a new one. The new field was designed for a 3 bedroom house, and the wastewater disposal system application approved by the town was for a 3 bedroom house. The broker received a copy of the approved application and did not note the discrepancy between the number of bedrooms on the application and the number of bedrooms in the promotional information given to the buyers.

After the leach field was installed, the sale closed. The buyers received a copy of the wastewater disposal system application along with numerous other documents. The document was not reviewed by the buyers until several years later. The buyers obtained estimates for a leach field that would be adequate for a 4 bedroom house. The estimates ranged between \$1,640 and \$1,750.

The broker was found in violation of 32 M.R.S.A. § 13067(1)(F), (G), and (H), and Chapter 330 Section 6(A) of the Maine Real Estate Commission Rules in effect at the time; and agreed to pay \$1,200 to the buyers.☞

On November 19, 1998 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who failed to report to the Director 4 convictions within 10 days of those convictions.

The associate broker was convicted of 4 counts of "Failure to File Tax Return" on February 6, 1998. He did not inform the Director of the convictions until renewing his license in August 1998. Final documentation regarding the convictions was not received until October 13, 1998.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(A) and § 13195, and agreed to pay a fine of \$800.00.☞

On January 21, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to disclose a criminal conviction on his license application. The sales agent disclosed on the application that he had been convicted of assault in 1992. Subsequently, at a meeting with the Director, the sales agent presented a document from the court showing that he had been charged with several offenses, but no dispositions for the charges were included on the document. The sales agent did recall

some of the charges and confirmed that he had been convicted for possession of marijuana, terrorizing and criminal trespass, although not disclosed on his license application. Additional documents showed that the sales agent had also been convicted of disorderly conduct. All but one of the convictions took place over five years ago.

The sales agent was found in violation of 32 M.R.S.A. § 13067(1)(A), agreed to pay a fine of \$200.00, and to submit brokerage reports reviewed and signed by his designated broker for a period of one year.☞

On January 21, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who failed to notify the Director within 10 days of a material change in the conditions or qualifications set forth in his original license application.

The sales agent became licensed with the Commission on June 12, 1998 and stated in his license application that he had never had a license revoked or suspended. The sales agent was also licensed with the State of Maine Board of Funeral Service as a practitioner. On October 24, 1998 the sales agent entered into a consent agreement with the Board of Funeral Service in which he agreed to surrender his practitioner license and not to reapply for a period of at least 18 months. The sales agent did not notify the Director of the surrender, as required by law.

The sales agent was found in violation of 32 M.R.S.A. § 13195 and agreed to pay a fine of \$300.00.☞

On January 21, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who pled guilty to a charge of selling unregistered securities, equivalent to a Class C crime.

The designated broker notified the Director of his guilty plea and of a plea offer made to him by the Office of the Attorney General. The designated broker was to testify in the trial of another individual involved in the selling of unregistered securities, and was not to be sentenced until the conclusion of that trial.

An office examination and trust account audit were conducted at the designated broker's agency. As a result of that examination and audit, it was found that the designated broker failed to provide to sellers and buyers a consent agreement for the client to provide informed written consent to disclosed dual agency, which was one of

the types of representation practiced by the agency. He did not have available for use a property disclosure form complying with current Commission requirements. He did not have notification on display in the public area of the agency disclosing that the interest earned by the agency trust account would be paid to the Realtor Affordable Housing Fund. He did not maintain records and supporting documents sufficient to verify the proper use of the trust account, specifically copies of contracts signed by all parties. He held rental money in the agency trust account and commingled those funds with earnest money deposits held for customers and clients.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and (H); § 13178; § 13275; and Chapter 320 Sections 3(D), (E) and (G) of the Maine Real Estate Commission Rules; agreed to notify the Director of the terms of his sentencing, to revise his written agency policy, to not maintain rental money in the agency trust account, and to pay a fine of \$500.00.☞

On January 21, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to disburse an earnest money deposit in a timely manner.

On April 17, 1995 the designated broker received an offer to purchase three undeveloped lots listed with his agency. The sellers countered the offer and the buyer accepted on May 12, 1995. The contract allowed for various deadlines in obtaining feasibility studies and permits for the construction of an ice arena. The total deposit that was made by the buyer was \$2,500.00.

Various extensions were made by the sellers and the buyer, with the final extension requiring a closing by May 24, 1996, and requiring that \$1,000.00 of the deposit be nonrefundable. The buyer prepared another extension agreement, but the sellers did not agree. The contract expired on May 24, 1996. Subsequently, another buyer was found for the property.

It was not until February 20, 1997 that the designated broker disbursed the earnest money deposit. He paid \$1,000.00 to the sellers and \$1,500.00 to the buyer, as specified in the agreement between the parties.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(H) and § 13178, and agreed to pay a fine of \$1,000.00.☞

On January 21, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to notify clients of a limiting policy regarding sharing compensation.

During July and August 1997, a buyer broker showed properties listed with the designated broker's agency to two different buyers. In both cases, offers were made. The offers each included a provision that the seller would pay 4% of the sale price to the buyer broker. Prior to contracting with the buyer broker, both buyers had contacted other agencies in the area, including the designated broker's agency.

In July 1997 the buyer broker received a letter from the designated broker identifying one of the buyer broker's clients and stating that the designated broker had an agency policy of refusing to pay a commission to another agency if the designated broker's agency had provided the buyer with direct information about the property listed. In August 1997, the buyer broker received another letter from the designated broker, pertaining to the other client of the buyer broker. The letter stated that the buyer had previously contacted the designated broker's agency about various properties and no commission would be paid to the buyer broker. In both transactions, the buyer broker continued negotiations on behalf of her clients and agreed that no commission would be due her from the sellers. Neither offer resulted in a sale.

During the investigation, the designated broker provided a copy of a document entitled "Agency Philosophy" which stated that a commission would not be paid to another brokerage agency if the customer of the other agency had previously contacted a salesperson of the designated broker's agency. Contact was defined as providing information on a listing and/or showing the property. The designated broker confirmed that buyers were not told of the policy when contacting the agency for information about listings. In addition, the listing agreement used by the designated broker's agency stated that the agency policy was to cooperate and compensate other agencies working as either subagents or as buyer agents. The policy of not compensating other agencies if the client/customer of that agency had previously contacted the designated broker's agency was not mentioned in the listing agreement.

The Agency Disclosure Form #1 used by the designated broker's agency

was also reviewed. Two versions were in use. One version was the form mandated by the Commission for use by all agencies. The second version had been altered by using a different type set and by adding and deleting wording from the form. The designated broker ceased using the altered form during the investigation.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and (H), Chapter 330 Sections 6(B) and 9(B) of the Maine Real Estate Commission Rules, agreed to amend all brokerage agreements used by the agency to add any limitations, and to pay a fine of \$500.00.☹

On February 25, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a sales agent who disclosed a criminal conviction on her license application. The sales agent disclosed on the application that she had been convicted of aggravated assault with a dangerous weapon, specifically her automobile, while driving under the influence of alcohol. The sales agent disclosed that she was sentenced to 8 years in jail with all but 90 days suspended, was placed on probation for 4 years, and that her driver license was suspended for 90 days.

The Director and the sales agent agreed that the license would be issued under the conditions that the sales agent provide written brokerage and probation reports for the remainder of her probation. In addition, the license was issued with the understanding that further action would be taken if any information was received subsequent to the issuance of the license that revealed any other convictions not disclosed in the license application.☹

On March 25, 1999 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who failed to obtain information necessary to make disclosures to buyers.

The associate broker listed for sale a house and land that was owned by Fannie Mae. When preparing the preprinted property disclosure form, the associate broker put an X through each section of the form and noted that the seller was a corporation and had no knowledge about the property. The associate broker did not verify or attempt to verify any additional information about the various aspects of the property. Subsequently, the property was purchased.

During the investigation, the associate broker provided evidence showing that he changed his practice in gathering

information about properties and completing property disclosure forms.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 330 Sections 15 through 19 of the Maine Real Estate Commission Rules, and agreed to pay a fine of \$400.00.☹

On March 25, 1999 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who failed to verify tax information.

The associate broker listed for sale residential property. During the listing process, the sellers told the associate broker that the property taxes were \$657.00. The associate broker included that information on the property data form. Although the associate broker's practice was to verify tax information with the town, she did not do so in this case.

Subsequently, buyers were found for the property and were given the tax information contained on the property data form. At the closing, the buyers were informed that the taxes on the property were actually \$824.93. When the buyers questioned that information, the sellers said that the taxes had increased over the previous three years. After the closing, the buyers contacted the town and discovered that the tax figure of \$657.00 was for the year 1995, and the taxes had increased each year thereafter.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(H) and agreed to pay a fine of \$250.00.☹

On April 15, 1999 the members of the Commission accepted a consent agreement entered into by the Director and an associate broker who failed to verify and convey appropriate information to his client during the sale of property.

The associate broker listed a 3 unit residential property with a 3 car garage. Each unit was occupied by tenants and 2 of the garage bays were rented space. The owner of the property was living in California. A purchase and sale agreement was entered into, which required that the seller vacate one of the dwelling units. At some later time, the buyers requested that 2 units of the house and the garage be vacated. The seller and the associate broker discussed notice to the tenants. The associate broker told the seller that he would provide notice to vacate to the tenants of the garage space upon receipt of their names. There is some dispute about whether the seller provided the names of the tenants,

but the associate broker did not notify the garage tenants to vacate.

The day before the closing, the associate broker and the buyers walked through the property and discovered furniture and personal belongings in one of the vacated units, and that the 2 rented garage bays had not been vacated. The buyers requested that money be placed in escrow pending clearance of the garage. The buyers also told the associate broker that they knew an attorney who would tell them the proper amount of time needed to notify the tenants of the garage to vacate. The seller agreed to the escrowed money, and notified the associate broker that the furniture and personal items in the house were his. The associate broker agreed to arrange for donation of various items to Goodwill, at the request of the seller. The associate broker also agreed to provide to the seller a receipt from Goodwill.

The buyers notified the associate broker that 14 days was sufficient notice to the tenants of the garage. The associate broker did not verify the information with anybody. In addition, the associate broker agreed to allow the buyers to contact Goodwill about the items to be donated, thereby not obtaining a receipt for the seller. Subsequently, the associate broker learned that 14 days was not sufficient notice to vacate, but did not notify the seller. At the specified time, the buyers demanded payment of the escrowed money because the garage had not been vacated, as specified in the purchase and sale agreement.

The associate broker was found in violation of 32 M.R.S.A. § 13067(1)(G) and agreed to pay a fine of \$400.00.☹

On April 15, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who changed a provision of a purchase and sale agreement without approval or consent of the parties to the contract.

The designated broker notified area agencies that the new policy of his agency was to pay 40% of the commission to buyer brokers in the sale of his agency's listings. Sometime after that notification, a licensee from another agency who was representing the buyer presented a written offer to purchase property listed by the designated broker. The offer included a provision that the buyer broker's agency received 50% of the commission. The offer was presented to the sellers, and after negotiating some other provisions of the offer, an agreement was reached. No change had

been made to the provision for payment of the commission.

Subsequently, the designated broker changed the purchase and sale agreement to state that the buyer broker's agency would receive 40% of the commission paid to the listing agency. Neither the buyers nor the sellers were consulted, and neither party indicated approval on the contract. At the closing, which the designated broker did not attend, the sellers were surprised and concerned upon learning that the commission was not to be split equally between the agencies involved in the transaction, and that the contract had been changed without their approval.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(A), (G), and (H), and agreed to pay a fine of \$1,500.00. ☹

On April 15, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who was using a modified version of Disclosure of Agency Relationships Form #1 ("Form #1").

In July 1994 each designated broker, including this one, was provided by the Commission with a camera ready copy of the mandated Form #1, along with instructions that the mandated form was to be used by all agencies and was not to be changed in any way. The designated broker changed the format, spacing and language of the form and provided the amended form to all agency affiliates for use. The amended form had been used since 1994. During the investigation, the designated broker began using the correct mandated form.

The designated broker was found in violation of 32 M.R.S.A. § 13279, § 13067(1)(H) and § 13067(1)(I)(1), and agreed to pay a fine of \$500.00. ☹

On April 15, 1999 the members of the Commission accepted a consent agreement entered into by the Director and a designated broker who failed to properly supervise a sales agent licensed with his agency.

Within the first 90 days of being licensed with the agency, the sales agent entered into a buyer broker agreement and showed her clients property listed with another agency. The property disclosure form provided by the listing agent had no information in any section of the preprinted form, and included a statement that the seller was a corporation and had no information about the property. The property data form provided by the listing agent

stated that the property was served by a private water supply and waste disposal system.

The sales agent showed the property to her clients two times. Although it was the sales agent's first transaction, the designated broker did not accompany her on any of the showings, nor did he review with the sales agent any disclosure information obtained from the other agency. A purchase and sale agreement was prepared by the sales agent and forwarded to the listing agent. The designated broker reviewed the offer but did not initial it. The offer was accepted, but at a later point the seller declared the contract void due to a contingency not being met. The buyers subsequently obtained an attorney and renegotiated the purchase.

The designated broker was found in violation of 32 M.R.S.A. § 13067(1)(F), Chapter 320 Sections 1(A)(1) and 2(A) of the Maine Real Estate Commission Rules, and agreed to pay a fine of \$400.00. ☹

DOES IT MATTER IF YOU RENEW YOUR LICENSE A FEW DAYS LATE?

You bet. At the very least, you will be asked to furnish information about activity conducted during the time your license was expired. If you conducted brokerage during the expired period, you will be asked to enter into a consent agreement in which you may be required to pay a fine.

Between April 23, 1998 and March 25, 1999, the members of the Commission have accepted 8 consent agreements, all of which involved licensees who failed to renew their licenses before the expiration date and continued conducting brokerage while not properly licensed, or conducted brokerage on behalf of an agency without being properly licensed with that agency.

The time periods varied from 2 days to 96 days. Fines were imposed ranging from \$100.00 to \$1,000.00.

QUESTIONS FROM THE INDUSTRY

*Carol J. Leighton
Karen L. Bivins
Judy S. Brown
Deborah A. Fales
Laurel H. Grady*

Q. *My company's policy on agency relationships is that we represent both buyers and sellers as appointed agents. I want to show a company listing to a buyer who does not want representation. Another agent in the company is the appointed agent of the seller. Do I have to be appointed as an appointed agent representing the seller?*

A. You need to consult your company policy. If your company policy limits representation to appointed agents for either the buyer or seller, then you need to be appointed (consistent with Chapter 330, Section 8 of the Commission rules). However, if that is the company policy, the designated broker may want to consider amending it to permit the other licensees in the company to be non-agents, or transaction brokers as it is often referred to in the marketplace. The seller already has an agent representing his/her interests and may not need or want to consent to another agent, particularly if the appointment is only being considered because the buyer has chosen not to be represented. It may be preferable to allow another licensee to participate in the transaction and be compensated for that participation but not require that licensee to be an agent for either party. Remember, a licensee does not need to be an agent with fiduciary level duties and vicarious liability, to and from the client, to be compensated. The designated broker should review the company policy on agency relationships to be certain that the policy is consistent with the brokerage practices of that company and is in compliance with the Brokerage Act and Commission rules.

Q. *I've just delivered an offer from a buyer to my seller client and another offer has been dropped off by a licensee from another company. I told that licensee that I just delivered an offer to my client. When the "first" buyer made her offer I mentioned that there were no other offers. Do I need to notify the "first" buyer of the other offer?*

A. You may feel an obligation to the "first" buyer but your fiduciary duty is to

your seller and that requires you to inform your client of the other offer as soon as possible. In communicating the other offer you should let your client know that the "first" buyer is unaware of other interest and made her offer with the understanding that she was the only person making an offer. If your client instructs you to notify the "first" buyer then certainly you need to do so. However, if your client instructs you to deliver the offer immediately without informing the "first" buyer, you must obey that instruction. The dilemma may have been avoided by informing the "first" buyer that other offers may come in at anytime prior to the seller's acceptance and there may not be an opportunity to inform the buyer.

Q. A listing taken by an associate broker before her license expired has now closed. May I pay a commission to that associate broker even though she is no longer licensed?

A. Yes. The brokerage compensation being paid is for brokerage conduct performed while the associate broker was properly licensed with the company.

Q. I want to attach Disclosure of Agency Relationships Form #1 to an email message so that I can electronically send a marketing package to a customer. How can I do that?

A. One important factor you must remember is that Form #1 cannot be changed in any way. That includes spacing and type styles. Form #1 can be scanned into your computer, but you must ensure that when the recipient receives your transmission, it is in the same format mandated by the Commission. We have had several people call about their efforts to do this, but so far have not been successful. One of the problems is that you cannot be sure that the recipient's computer will be able to read and display Form #1 in the same format. Unless you find a way to ensure the integrity of the document, you should continue to deliver Form #1 in the same manner you have been using – hand delivery, fax or by mail.

Q. My agency had a listing that went under contract with a buyer. Several things happened and the contract was terminated by the parties. A dispute developed over the deposit and my agency is holding the funds until a resolution is reached. In the meantime, is it proper to continue marketing the

property even though there is a dispute pending?

A. If the parties to the purchase and sale agreement terminated the contract, it is certainly proper to continue marketing the property. The dispute over the deposit is a separate matter between the parties and does not prevent the seller from entering into a new contract with another purchaser.

Q. My buyer client entered into a purchase and sale agreement with a seller. Less than 48 hours later, my buyer decided he did not want to purchase the property. The seller does not want to terminate the contract. Is there a 3 day right of rescission in Maine?

A. No. There is no right of rescission in Maine. If the seller does not agree to terminate the contract and your client does not want to proceed, you should advise your client to seek legal counsel about what recourse may be available to him.

Q. I have a non-interest bearing trust account for my agency. Recently, I worked with a buyer who paid a rather large earnest money deposit and wanted to put it into an account that will earn interest. Can I open a separate trust account for just one transaction?

A. Yes, you can open an individual trust account for one specific transaction. There should be a provision, preferably as part of the purchase and sale agreement, stating that the deposit will earn interest and stating how the interest is to be disbursed. The bank should be able to assist you in setting up the account and ensuring that the proper party or parties are included on federal tax documents pertaining to the interest earned on the account.

Q. I sometimes work with buyers who are looking for land to buy and then want me to refer them to a builder. Some builders pay a referral fee to my agency. Should I disclose to the buyer that the builder is paying a referral fee?

A. Yes, you must disclose to a buyer that the builder to whom you are referring the buyer is paying a fee to your agency for that referral. That fact is pertinent information that the buyer is entitled to know before making a decision about which builder to contact.

Q. I am holding an earnest money deposit in my trust account. The sale did not close and the parties are both

claiming the deposit. I am not going to release the money until the parties reach an agreement. What should I tell the buyer and the seller?

A. Under the Commission rules, you may continue to hold the funds in your trust account until the parties reach some resolution. However, you should notify both parties of your decision and explain that they should take steps to resolve the matter. The parties may wish to consult their attorneys for advice in reaching an agreement or about pursuing their claims through the court system.

Q. My license expires in August 1999 but I plan to renew it as soon as I receive my notice in June. Will courses I take in June & July be counted for my next renewal in 2001?

A. No. Courses for renewal must be taken within the licensing biennium. Which means only those courses taken after your renewal date in August 1999 will be counted toward your next renewal in August 2001.

Q. Do I need to file with the Commission if I am moving from the main office of my agency to a branch office?

A. Yes. You will need to file a Change of License application and pay the \$20 fee. A move to a branch office is considered the same as a change of agency. Once you have made the change, all your license information will be tied to the branch office instead of the main office.

Q. Can I use the core course in effect now for my renewal in 2000?

A. Possibly. The core course changes periodically and most licensees will be required to complete the new course once it has changed. New core requirements usually take effect January 1 of the year the new course is required. Past practice has been to allow a licensee to use the previous core requirement if the license is due for renewal between January 1 and May 31 of the effective year and is renewed within that same time frame.

Q. My Sales Agent license expires soon and I have not completed the requirements for an Associate Broker license. 1- Will I lose everything I have done so far? and 2- Can I apply for a new Sales Agent license as soon as my current license expires?

A. 1- No. Any requirements you

continued next page

have completed will remain valid for 5 years from the date you were originally licensed. You may continue the qualification process for up to 3 years *after* your 2-year Sales Agent license expires even though you will not be licensed to practice real estate brokerage.

2- No. Maine Statute allows for one Sales Agent license within a five-year period. For example, if you were first licensed on June 1, 1997, you may not re-apply for another Sales Agent license until June 1, 2002. Sales Agent was created as a training license and was not intended to be continued beyond the initial 2-year term. However, it is possible, under some extenuating circumstances, to obtain a one-year extension that would allow you to continue to practice while completing the Associate Broker requirements. Contact the Commission for more information. ☺

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